

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

CM/ECF USERS' ADVISORY GROUP

APRIL 10, 2002, MEETING

MINUTES

A meeting of the CM/ECF Users' Advisory Group (UAG) was held on Wednesday, April 10, 2002. The meeting, which was held via video teleconference at the Court's Alexandria, Norfolk and Richmond facilities, commenced at 2:15 P.M. and concluded at 3:25 P.M. The following persons were in attendance at the meeting: Robert Coulter, Roy Lasris, Barry Spear, Frank Santoro, Debera Conlon, Bill Parkinson, Charles Krumbein, Peggy Grivetti, Steve Kopacki, Chuck Miller, Barry Wells, Michael Johnson, Dick Napoli and Bill Redden

Approval of Minutes from Last Meeting and Opening Comments (*Bill Redden*)

Bill Redden welcomed Robert Coulter as a new member to the UAG. He is an Assistant U.S. Attorney, in Alexandria and is involved in ECF training and related activities for his office and for other U.S. Attorney's Offices.

Bill advised that the Court recently had entered Standing Order No. 02-1, which authorizes the *Clerk of Court to Enter into Agreements with Governmental and Institutional Filers for the Purpose of Participating in a Pilot Program to Effect Filings by Electronic Means Via the Internet*. [Since the meeting, the clerk entered into the first such agreement with the United States Internal Revenue Service with respect to the filing of proofs of claim electronically via the Internet on a pilot basis.]

Bill referenced various handout items provided at the meeting to the meeting participants.

Bill commented on an Administrative Office document posted to its Intranet (the J-Net) web site entitled "CM/ECF Court Activities as of 3/31/2002." From this March 2002 handout item, Bill noted that 27 bankruptcy courts are now operational on the CM/ECF system. With respect to new cases opened by attorneys electronically in the Eastern District of Virginia (VAEB), 2,400 (or 83%) of 2,896 petitions were opened by electronic means via the Internet. The VAEB ranked third in this category exceeded only by the District of Delaware (482/528-91%) and Middle District of Louisiana 310/341-91%), both of which districts have much smaller total petition filings and stricter electronic filing requirements than does the VAEB. The VAEB ranked third in the number of non-court users who have registered and ranked fourth in the number of non-court users who have filed (579). Interestingly, the VAEB ranked first in the total number of petitions filed by electronic means via the Internet (2,400). [The Northern District of Georgia, which ranked second in this category, had a total of 3,944 petitions filed in March 2002, with 2,001 (or 51%) filed by electronic means via the Internet.] The Administrative Office places updated CM/ECF bankruptcy court activities information on the J-Net monthly.

[Following the meeting, Bill asked for final comments, via Internet e-mail, on the draft minutes from the January 29, 2002, UAG meeting. With no changes suggested, the minutes were deemed approved and will be placed on the Court's CM/ECF Home Page.]

1. Current Status and Information of Interest

a. CM/ECF Statistical Information

Bill noted that the statistical filings page linked to the VAEB Internet Home Page had been redesigned recently and invited meeting participants to examine the page. Statistical information relating to petition filings, by division and by chapter (along with adversary proceeding filings by division) have been and will be on the page link for the most recently concluded calendar month. An ECF petition filing spreadsheet for the period beginning in July 1999 and ending in December 2001 has been placed on this page as well. (Beginning in January 2002, all petitions have been filed under the CM/ECF system.) Bill commented upon the bar graphs showing petition and adversary proceeding filings for the first nine days of April 2002 and for the month of March 2002. Bill advised that only about two percent or so of total March 2002 petition filings were filed conventionally either by *pro se* filers or by attorneys. About 15% of the petitions were filed on computer diskette with the remaining 83% being filed by electronic means via the Internet. Bill expressed appreciation for the many positive comments the bar, trustees, U.S. trustee's office, U.S. attorney's office, other government agencies and the public have contributed since the changes made by Standing Order No. 01-6 were implemented in January of this year. Bill noted that the statistical information he commented upon lent empirical support to the many positive anecdotal comments received in recent months about the CM/ECF system.

b. CM/ECF Version 1 Modification Release 7 – Web PACER Billing Action Taken by the Judicial Conference (*Bill Redden*)

Bill advised that the Judicial Conference, at its March 2002 session, approved a change to its Electronic Public Access Fee Schedule Item I, effective April 1, 2002, whereby a page cap of 30 pages has been placed on separate documents accessed by electronic means via the Internet. This means that a person accessing a document would not be required to pay more than \$2.10 for a document (\$0.07 per page times 30 pages) regardless of how many pages in excess of thirty the document contained. The Administrative Office completed and provided the CM/ECF courts with Modification Release 7 to Bankruptcy CM/ECF Version 1 to adjust the accounting programming to incorporate this new requirement.

c. Privacy/Public Access Action Taken by the Judicial Conference (*Bill Redden*)

Bill noted that when the Judicial Conference met in session last month it undertook a number of actions affecting privacy and public access to documents and docket sheets that can be accessed by electronic means via the Internet. First, Bill commented upon the proposed amendment to Federal

Rule of Bankruptcy Procedure 1005 and to various bankruptcy official forms. In essence, if adopted, the rule and form changes would call for debtors' social security numbers to be redacted except for the final four digits. A public hearing scheduled for April 12, 2002, on these proposed changes has been cancelled and the period for public comment on the proposals ends on April 22, 2002. Second, Bill noted that some actions called for by the Judicial Conference were contingent upon statutory, national rule and official form changes taking place. He did advise that bankruptcy courts could proceed to educate the bar and litigants about the availability of documents on the Internet via PACER and the implementation of CM/ECF. Courts also are being encouraged to review their own internal procedures, local rules and standing orders to ensure that personal identifiers are not being collected and displayed when not required by statute. Bill indicated that the UAG would be asked to provide input on such a review process in the VAEB.

A question was raised about the extent to which Social Security Numbers would be made available to or accessible by government agencies. Bill indicated that he would investigate this issue further and provide feedback to the UAG.

Inquiry was made about the implementation of CM/ECF in other courts in the Fourth Circuit, including district courts and the U.S. Court of Appeals for the Fourth Circuit. Bill noted that eight of the nine bankruptcy courts in the Fourth Circuit have become or are in the process of becoming operational using CM/ECF. (The Fourth Circuit may become the first full circuit nationally to have all of its bankruptcy courts on CM/ECF.) The Western District of Virginia may be designated in the next wave of bankruptcy courts implementing CM/ECF. With respect to district courts, only a few district courts nationally have been announced for CM/ECF implementation and that process will continue over the next several years. The U.S. Courts of Appeals for the Fourth and the DC Circuits have been designated as CM/ECF prototype courts. The appellate Version 1 of CM/ECF is not expected to be released by the Administrative Office until sometime in 2003.

d. BOPS Update (*Barry Wells*)

Barry Wells and Michael Johnson provided the UAG with an update on BOPS. Phase I of BOPS has been completed and extensive piloting of the application throughout the VAEB has very successful. Phase II of BOPS will test the feasibility of having the Bankruptcy Noticing Center issue orders to parties who would not receive electronic notification of the entry of such orders by electronic means via the Internet. Bill commented that if testing of BOPS Phase II is successful, the requirement that order proponents submit self-addressed stamped envelopes along with proposed orders will be eliminated. At this time, a mid-summer 2002 release of BOPS Phase II is contemplated. Planning for BOPS Phase III is underway. Both Barry and Michael will be demonstrating BOPS at a May 2002 meeting of the Bankruptcy CM/ECF Working Group, which is tasked with providing CM/ECF-related advice to the Administrative Office. (Judge Mitchell is a member of the Working Group.) A number of Bankruptcy CM/ECF courts

have expressed an interest in using BOPS to meet their own electronic orders processing application needs as well. For this reason, BOPS has been designed to be used by other courts in addition to the VAEB.

e. NIBS Conversion Program Update (*Barry Wells*)

Barry provided the UAG with an update on the NIBS conversion utility program. To date, the Administrative Office has been called upon to fix a considerable number of bugs identified by VAEB automation staff. Until the Administrative Office's program has been fully de-bugged, NIBS electronic docket data will not be converted for use in the CM/ECF system. Bill noted that the Administrative Office is being held to its commitment to provide the VAEB and other NIBS courts with a workable and safe conversion utility program. If testing internally by automation and other clerk's office staff members does not result in the program being certified as complete by the beginning of May 2002, it is not likely that the next conversion window will be available before summer 2002.

f. New Bankruptcy Events Menu Options Principally Affecting Limited Registrants (*Michael Johnson*)

Michael noted the development of new "creditor claimant" menu events that have been designed for large volume creditors, non-attorneys and non-VAEB attorney members of the bar. These new features allow limited registrants to file proofs of claim, notices of transfers of claims and requests for notice, which are provided for by VAEB LBR 9010-1.

g. Bankruptcy CM/ECF Version 2 and 3 Updates (*Bill Redden*)

Bill noted that testing of Bankruptcy CM/ECF Version 2 is underway by the AO with volunteers from the CM/ECF courts participating in the testing process. (The VAEB ACC Team will be among the testing group from the CM/ECF courts.) Testing is expected to be completed by the end of May 2002 with a release to the CM/ECF courts taking places in mid-June 2002. Owing to a significant number of internal differences between Bankruptcy CM/ECF Version 1 and the planned Version 2, it is anticipated that Version 2 will be loaded onto the CM/ECF live database sometime in late summer or early fall 2002.

Bill advised that the Administrative Office has begun the initial development phase for Bankruptcy CM/ECF Version 3. A Version 3 Modification Requests (MR) Subcommittee has been established (using the successfully concluded Version 2 MR Subcommittee experience as a model). The CM/ECF courts have provided the Version 3 MR Subcommittee with listings of modification requests that were not incorporated into Bankruptcy CM/ECF Version 2. The Version 3 MR Subcommittee will review these listings and develop a prioritized listing for recommended incorporation into Version 3. No tentative release date for Version 3 has been announced but the general feeling is that such a release will occur before the end of 2003. [Since the UAG meeting, the Administrative Office announced that Version 3 will be

referred to as Release 3 and the Version 3 MR Subcommittee will be renamed the Release 3 MR Subcommittee.]

2. Technical Questions

a. **Withdrawal by Counsel Representing a Party in a Particular Aspect of a Case When Need for Representation of Party Concludes Before the Case Is Closed (*Bob Coulter*)**

The UAG addressed how an attorney whose need to receive notices by electronic means via the Internet has concluded in a matter could stop receiving further electronic notifications in the case. Michael Johnson explained the method currently in use by the clerk's office for attorneys to stop receiving such electronic notifications. Bill asked the UAG whether disseminating this information through the recently established CM/ECF practice advisory mechanism would be an appropriate communication tool for external ECF users. The UAG agreed and Bill indicated that an advisory would be prepared for release before the end of the following week. [CM/ECF Practice Advisory No. 02-4 was released on April 16, 2002, Item 1 therein.]

b. **Electronic Notice and Fed.R.Civ.P. 4/Fed.R.Bankr.P. 7004 Service (*Bob Coulter*)**

The UAG addressed how best information could be communicated to the bar on the need to ensure that the initial summons (with complaint attached) in an adversary proceeding be served conventionally, as provided for in Federal Rule of Civil Procedure 4 and Federal Rule of Bankruptcy Procedure 7004, and not by any electronic means. Bill commented upon this matter and noted that the Exhibit to Standing Order No. 01-6 addressed the matter at subparagraph II.B.3., which provides that "The filer shall serve a filing upon all persons entitled to notice or service in accordance with *applicable rules*, or, if service by first class mail is permitted under the rules, the filer may make service in accordance with subparagraph II.B.4. below." (Emphasis added.) Bill suggested and the UAG agreed that the practice advisory mechanism would be a good way to advise the bar of this requirement. Bill indicated that language for inclusion in a practice advisory would be prepared for issuance within a week's time. [CM/ECF Practice Advisory No. 02-4 was released on April 16, 2002, Item 2 therein.]

c. **ECF E-Mail Summary Notifications (*Barry Spear*)**

The UAG considered a suggestion from a member of the bar concerning how the electronic notification summaries could be improved by providing additional useful information to the recipients. Michael Johnson commented that the electronic notification summary option benefits high-volume recipients of such notifications the most. Michael advised that the VAEB recognizes the limitations currently in place and previously had submitted a modification request to the Administrative Office. If this MR is not included in a modification release in CM/ECF Version [Release] 2, the clerk's office will renew its efforts for inclusion of this MR in Version [Release] 3. The

UAG and court representatives recognized that the volume of summary electronic notifications will increase over time and the utility of this option will decrease if the summary lacks all required information.

3. Communications and Training Issues

a. CM/ECF Newsletter 2002 Issue 1 (*Dick Napoli*)

Dick Napoli reported that the clerk's office would issue the *CM/ECF Newsletter* quarterly. The 2002 Issue 1 of the *CM/ECF Newsletter* was released on April 8, 2002, and can be accessed at the VAEB CM/ECF Home Page. A copy of the newsletter was provided to the meeting participants as a handout. The CM/ECF practice advisory mechanism is intended to complement the newsletter and will be issued on a when-needed basis. Since January 2002, three such advisories have been released. [A fourth advisory, No. 02-4, was released on April 16, 2002 – see Items 2.a. and b. above.]

Dick also noted that the clerk's office recently had released a survey (of five questions) seeking input on the ECF tutorial located on the VAEB CM/ECF Home Page. Dick advised that the survey only would take a few minutes to complete and could be completed entirely online at the link found on the VAEB Internet and CM/ECF home pages. Completion of the survey by those who have used the tutorial is strongly encouraged.

b. “Filing a New Bankruptcy Case Using CM/ECF – Open BK Case and Case Upload” Flow Chart Handouts (*Dick Napoli*)

Dick advised the UAG that the VAEB clerk's office had recently developed and released two new case flow charts for the benefit of the bar. (Copies of both flow charts were provided to the UAG members.) The first flow chart shows the steps needed to open a BK case in CM/ECF. The second flow chart shows the steps needed to use the case upload feature provided in CM/ECF and through software petition provider vendors whose products are case upload compatible. The flow charts are available at the intake counters in each staffed bankruptcy court facility and have been placed on the Training Manuals page, which is linked to the VAEB CM/ECF Home Page.

c. CM/ECF Practice Advisory No. 02-3 (*Bill Redden*)

On April 2, 2002, the clerk's office released CM/ECF Practice Advisory No. 02-3, which provides instructions for filing via diskette. While filing by electronic means via the Internet is strongly encouraged, the clerk's office released this practice advisory to ensure that the computer diskette filing process is optimized and made as effective as possible for the benefit of the filer and the clerk's office. This practice advisory has been placed on the VAEB Internet and CM/ECF home pages. [When practice advisories are removed from the message areas of both home pages, they are placed, for later reference, at the “ECF Announcements” page linked to the CM/ECF Home Page.]

d. Requests from Bankruptcy Courts to Visit the EDVA to Review CM/ECF (*Dick Napoli*)

Dick Napoli provided information to the UAG on requests received from several bankruptcy courts to send representatives to visit the VAEB to learn more about CM/ECF. These courts largely have been designated to implement CM/ECF or are expected to be so designated in the near future. [On April 18, 2002, an updated list was provided to the UAG members via Internet e-mail.]

e. CM/ECF Help Desk (*Michael Johnson*)

Michael Johnson indicated that the CM/ECF Help Desk, staffed by the clerk's office's ACC Team, welcomed feedback on how it provides assistance and guidance to ECF users.

4. Handout Materials (*at meeting sites*)

Bill noted the handout materials provided to the meeting participants, which had been identified earlier in the meeting.

5. Other Issues of Interest

The need to revise the text of certifications of service to a number of forms, which are made available to the bar on the VAEB Internet Home Page, was raised and discussed by the UAG. Peggy Grivetti and Bill Redden advised that the court representatives would look into this matter recognizing that some of the forms might require LBR change.

6. Next Meeting Date, Location(s) and Time

The next UAG meeting will be scheduled for Thursday, June 20, 2002. The meeting will be held via video teleconference, through Sprint, from 2:00 P.M. to 3:45 P.M., at the Court's Alexandria, Norfolk and Richmond facilities. UAG members are requested to provide Bill Redden with proposed agenda items, issues of interest and technical questions by a date to be provided. This will facilitate a review by court representatives of any submitted agenda items and technical questions prior to the next UAG meeting.

An agenda for the next meeting will be sent out by the clerk's office to all members, via Internet e-mail, on a date to be determined.

The meeting adjourned at 3:25 P.M.

Respectfully submitted,

William C. Redden